

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

TRUEPOSITION, INC.,)	
)	
Plaintiff/)	
Counterclaim-Defendant,)	
)	Civil Action No. 05-747-SLR
v.)	REDACTED VERSION DI 255
)	
ANDREW CORPORATION,)	
)	
Defendant/)	
Counterclaim-Plaintiff.)	
_____)	

JOINT PRETRIAL ORDER

Pursuant to Local Rule 16.3(c), TruePosition, Inc. ("TruePosition") and Andrew Corporation ("Andrew") hereby submit their Joint Pretrial Order for approval by the Court.

I. NATURE OF THE ACTION AND THE PLEADINGS

This is a patent infringement action involving TruePosition's U.S. Patent No. 5,327,144, issued in July, 1994 ("144 patent"). The 144 patent relates to locating cellular telephones.

On October 25, 2005, TruePosition filed its original Complaint against Andrew alleging infringement of the 144 patent (D.I. 1). Various pleadings followed, culminating in the filing of TruePosition's Second Amended Complaint for Patent Infringement (D.I. 45) and Andrew's Answer and Counterclaim to Second Amended Complaint (D.I. 48).

Andrew has asserted non-infringement and invalidity declaratory judgment counterclaims (Counterclaim I) as well as five standards-based counterclaims, asserting claims for fraud (Counterclaim II), unfair competition under the California Business and Professional Code

§§ 17200 *et seq.* (Counterclaim III), equitable and promissory estoppel (Counterclaims IV and VI), and implied license (Counterclaim V) (D.I. 48 at 9-19).

On January 31, 2007, TruePosition filed a motion for partial summary judgment that the '144 patent is not invalid by reason of anticipation. (D.I. 134-135). On February 2, 2007, TruePosition filed a motion for summary judgment on Andrew's standards-based counterclaims. (D.I. 137-138). Also on February 2, Andrew filed a motion for summary judgment of non-infringement of the '144 patent, and a motion for summary judgment that claim 22 is invalid for indefiniteness. (D.I. 145-148). The parties filed opening *Markman* briefs February 2 and responsive *Markman* briefs on February 28, 2007. On April 10, 2007, the Court held a hearing on the summary judgment motions and claim construction.

The Pretrial Conference is scheduled for August 29, 2007 at 4:30 p.m., with trial to begin on September 4, 2007. Andrew seeks an equitable relief hearing to determine the propriety and nature of equitable relief in the event that it is found to infringe the '144 patent. TruePosition seeks a hearing, at the Court's discretion, on the issue of injunctive relief in the event that Andrew is found to infringe the '144 patent.

II. BASIS FOR FEDERAL JURISDICTION

This is an action for patent infringement arising under the Patent Laws, 35 U.S.C. §§ 101 *et seq.* This Court has jurisdiction over this action under 28 U.S.C. §§ 1338(a), 2201, and 2202. This Court has jurisdiction over Andrew's counterclaims pursuant to 28 U.S.C. §§ 1331, 1338, 1367, 2201, and 2202. Venue in this judicial district is proper under 28 U.S.C. §§ 1391 and 1400. Jurisdiction and venue in this action are uncontested.

III. FACTS WHICH ARE ADMITTED

The Parties' Joint Statement of Uncontested Facts is attached as Exhibit 1. These admitted facts require no proof at trial and shall be read to the jury.

IV. STATEMENTS OF ISSUES OF FACT REMAINING TO BE LITIGATED

TruePosition's statement of issues of fact and law remaining to be litigated is attached as Exhibit 2.

Andrew's statement of issues of fact remaining to be litigated is attached as Exhibit 4.

V. STATEMENTS OF THE ISSUES OF LAW REMAINING TO BE LITIGATED

TruePosition's statement of issues of fact and law remaining to be litigated is attached as Exhibit 2. TruePosition's statement of evidentiary / *in limine* issues is attached as Exhibit 3.

Andrew's statement of issues of law remaining to be litigated is attached as Exhibit 5, Andrew's statement of evidentiary / *in limine* issues is attached as Exhibit 6.

VI. EXHIBITS

TruePosition's list of exhibits that it expects to offer at trial is attached at Exhibit 7. Andrew's objections to those exhibits are included in the far right-hand column of Exhibit 7.

Andrew's list of exhibits that it expects to offer at trial is attached at Exhibit 8. TruePosition's objections to those exhibits are included in the far right-hand column of Exhibit 8.

The parties have agreed that documents used solely for impeachment or cross-examination need not be listed on their respective exhibit lists.

The parties have endeavored in good faith to include on their respective exhibit lists those exhibits they anticipate will be used in rebuttal with respect to their respective claims. However, the parties reserve the right to introduce any exhibit listed by the other party (subject to any valid evidentiary objection by the other party) and to supplement their trial exhibit lists in response to evidence introduced at trial, provided, however, that no exhibit shall be admitted into evidence unless identified in this Order or unless leave of Court is obtained for good cause shown.

Demonstrative exhibits have not been identified on the parties' trial exhibit lists. The parties will exchange proposed initial demonstrative exhibits on August 17, 2007. The parties' objections to the other party's proposed initial demonstrative exhibits, if any, shall be exchanged on August 23, 2007. The parties reserve the right to create demonstrative exhibits based on testimony given at trial.

VII. WITNESSES (INCLUDING WITNESSES TESTIFYING VIA DEPOSITION)

TruePosition's list of witnesses, which specifies whether such witnesses will be called live or by deposition, is attached as Exhibits 9.

Andrew's list of witnesses, which specifies whether such witnesses will be called live or by deposition, is attached as Exhibit 10.

No witness shall be permitted to testify unless identified in this Order, or unless the Court should determine that such witness should be called in the interest of justice.

TruePosition's designations of deposition testimony that may be introduced at trial are attached as Exhibit 11. Andrew's counter-designations and objections to TruePosition's designations are attached as Exhibit 12.

Andrew's designations of deposition testimony that may be introduced at trial are attached as Exhibit 13. TruePosition's counter-designations and objections to Andrew's designations are attached as Exhibit 14.

VIII. STATEMENT OF INTENDED PROOFS

TruePosition's statement of intended proofs is attached as Exhibit 15.

Andrew's statement of intended proofs is attached as Exhibit 16.

IX. AMENDMENTS OF THE PLEADINGS

Neither party contemplates any amendment of the pleadings.

X. DISCUSSIONS OF SETTLEMENT

The parties have discussed settlement but have been unable to reach a resolution.

XI. OUTSTANDING MATTERS

A. Claim Construction

The parties have submitted briefs on claim construction issues and the Court has heard oral argument.

B. Summary Judgment

TruePosition has submitted and argued the following motions for summary judgment, and the Court has heard oral argument:

- TruePosition's Motion for Summary Judgment on Andrew's Counterclaims II-VI and Affirmative Defenses III-V; and
- TruePosition's Motion for Partial Summary Judgment That Andrew Cannot Prove Its Claims of Invalidity.

Andrew has submitted and argued the following motions for summary judgment:

- Andrew's Motion for Summary Judgment of Noninfringement; and
- Andrew's Motion for Summary Judgment of Invalidity of Claim 22 of the 144 Patent for Indefiniteness.

C. *Daubert* Motions

TruePosition has submitted the following *Daubert* motions:

- TruePosition's Motion to Exclude the Testimony of Dewayne E. Perry Pursuant to Federal Rule of Evidence 702;
- TruePosition's Motion to Exclude the Invalidity Testimony of Dr. David Goodman Pursuant to Federal Rule of Evidence 702.

Andrew has submitted the following *Daubert* motions:

- Andrew Corporation's *Daubert* Motion for a Ruling Limiting the Testimony of Dr. Brian Agee; and
- Andrew Corporation's *Daubert* Motion for a Ruling Limiting the Testimony of Dr. Oded Gottesman.

XII. MISCELLANEOUS

Pursuant to D. Del. LR 51.1 the parties will file proposed jury instructions, proposed verdict forms and proposed voir dire questions no later than Friday, August 24, 2007. Although the parties continue to meet and confer regarding these issues, the parties also expect to file competing instructions and forms, accompanied by citations to supporting authority, on issues that cannot be resolved.

XIII. ORDER TO CONTROL COURSE OF ACTION

This Order shall control the subsequent course of the action unless modified by the Court to prevent manifest injustice.

Respectfully submitted,

/s/ James D. Heisman

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SO ORDERED this ____ day of August, 2007

Sue L. Robinson

United States District Judge

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